HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 01, 2017
85th Legislature, Number 60
The House convenes at 2 p.m.
Part One

Twenty-eight bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 60

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, May 01, 2017
85th Legislature, Number 60
Part 1

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SUBJECT: Jail-based competency restoration, diversion grants, identifying arrestees

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

WITNESSES: For — Kathryn Lewis, Disability Rights Texas; Richard Morrison, Green Behavioral Health, Inc.; Gyl Switzer, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; William Mills and Dennis D. Wilson, Sheriffs' Association of Texas; Lee Johnson, Texas Council of Community Centers; (*Registered, but did not testify*: Guadalupe Gordon and Eileen Moxley, Arch Diocese of San Antonio; Matt Moore, Children's Health System of Texas; Linda Townsend, CHRISTUS Health; Reginald Smith, Communities for Recovery; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County Commissioners Court; Eric Woomer, Federation of Texas Psychiatry; Amanda Boudreault, League of Women Voters of Texas; Bill Kelly, Mayor's Office, City of House; Nelson Jarrin, Meadows Mental Health Policy Institute; Rebecca Fowler, Mental Health America of Greater Houston; Christine Yanas, Methodist Healthcare Ministries; Evy Munro, MIND MSGA UNTHSC; Eric Kunish, National Alliance on Mental Illness; Will Francis, National Association of Social Workers - Texas Chapter; Henry Trochesset, Ricky Scaman, Micah Harmon, and AJ Louderback, Sheriffs' Association of Texas; Mark Mendez, Tarrant County; Laura Nicholes and Rick Thompson, Texas Association of Counties; Anne Celeste Merlo, Texas Catholic Network; Diana Fite, Texas College of Emergency Physicians; Donald Lee, Texas Conference of Urban Counties; Jan Friese, Texas Counseling Association; Carrie Kroll, Texas Hospital Association; Ruth Abrams, Lane Aiena, Steven Hays, Jerome Jeevarajan, G Sealy Massingill, Moez Mithani, Carolyn Parcells, Lee Ann Pearse, Sanjana Puri, Iqra Qureshi, Madelyn Ricco, Michelle Romero, Anna Shamsnia, Zoe Tramel, and Callan Young,

Texas Medical Association; Pruthali Kulkarni, TMA-MSS; Joseph Green, Travis County Commissioners Court; Aidan Utzman, United Ways of Texas; Woodrow Gossom, Wichita County; and 19 individuals)

Against — (*Registered, but did not testify*: Monica Ayres and Lee Spiller, Citizens Commission on Human Rights; and 16 individuals)

On — Tim Bray, Department of State Health Services, Health and Human Services Commission; David Slayton, Texas Judicial Council; (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Erin Foley and Sonja Gaines, Health and Human Services Commission)

BACKGROUND:

Code of Criminal Procedure, art. 15.17 requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights. Art. 16.22 requires a sheriff to notify magistrates within 72 hours if the sheriff has cause to believe that a person in custody has a mental illness or is a person with mental retardation. This can start a process of gathering and assessing information about the arrestee, including whether there is the potential that the defendant is incompetent to stand trial.

Code of Criminal Procedure, art. 17.032 establishes procedures for releasing on personal bond certain arrestees believed to have a mental illness or believed to be a person with mental retardation who was competent to stand trial. Magistrates must release those who qualify, unless good cause is shown to do otherwise. To qualify, arrestees may not be charged with or have a previous conviction for certain violent offenses. Arrestees also must be examined by a mental health expert. Magistrates must determine that appropriate community-based services are available and, unless good cause is shown to do otherwise, require treatment as a condition of release on personal bond if certain conditions are met.

Code of Criminal Procedure, chapter 46B establishes the state's standards and procedures for determining if a criminal defendant is incompetent to stand trial.

DIGEST:

CSHB 12 would revise the process of gathering and assessing information

about an arrestee who may have mental illness or an intellectual disability, amend statutes covering the release on personal bonds of certain mentally ill defendants, establish a statewide jail-based competency restoration program, and establish a program to give grants to local collaboratives to reduce recidivism, arrests, and incarceration of persons with mental illness and to reduce wait times for forensic commitment of persons with mental illness to a state hospital. The bill also would replace references to mental retardation with references to intellectual and developmental disability.

The bill would take effect September 1, 2017, and would apply only to defendants charged with an offense committed on or after that date.

Identification, screening of arrestees. CSHB 12 would place a reference to current proceedings used to identify defendants with mental illness or intellectual disabilities into the Code of Criminal Procedure, art. 15.17 provisions establishing magistrates' duties at initial hearings. Art. 15.17 would require that if magistrates were given notice of credible information that could establish reasonable cause to believe that a person before them had a mental illness or was a person with an intellectual disability, they would be required to start the proceedings.

The bill would shorten the time frame for sheriffs to provide notice to magistrates about having credible information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability and would include municipal jailers under this requirement. The notice would have to be given within four hours, rather than 72 hours, after receiving the information. CSHB 12 would exclude from this process defendants accused of class C misdemeanors (maximum fine of $500).

The timeframe for local mental health and local intellectual and developmental disability authorities to provide additional information to the magistrate after an assessment would be shortened to require information within 72 hours for those held in custody and within 30 days for those released from custody, unless good cause was shown to do otherwise. Currently, information is required within 30 days after being ordered in felony cases and 10 days after orders issued in misdemeanor cases.

The bill would expand the places where courts could order defendants to submit to exams after a refusal to submit to the collection of information. Magistrates could order defendants to submit to exams at the jail or another place determined appropriate by a mental health or local intellectual and developmental disability authority, instead of only at a mental health facility. The maximum time that persons could be ordered to a facility to submit for this exam would be changed from 21 days to 48 hours.

The bill would expand the options that trial courts had after receiving the assessment of the person to include referring the defendant to one of the state's specialty courts, which include mental health courts. Courts currently are authorized to release defendants from custody on a personal or surety bond before, during, or after the collection of information, and CSHB 12 would authorize courts to place a condition on a bond in these situations to include a requirement that the person submit to an exam or an assessment.

Release on personal bond for certain defendants. CSHB 12 would amend the current directive to magistrates to release certain defendants, unless good cause was shown to do otherwise, on personal bond if certain conditions were met. The current requirement applies when magistrates have an expert's assessment concluding that a person has a mental illness or an intellectual disability and the defendants met other requirements relating to their offense, criminal history, and other factors.

The bill would make the current requirement to release certain defendants on personal bonds apply without regard to a standing order by a judge, a bond schedule, or other statutory provisions restricting courts. CSHB 12 would add to the list of conditions that must be met before a magistrate may release these defendants on personal bonds. Magistrates would have to find that the release on personal bond would reasonably ensure the defendant's appearance in court and the safety of the community and the victim and could impose conditions on the bond to ensure these things. In making the finding, the magistrate would have to consider all the circumstances, a pretrial risk assessment, and information from the prosecutor and the defense.

The bill would amend the list of violent offenses that may disqualify these arrestees with mental illness or an intellectual disability from being released on personal bond. CSHB 12 would make the prohibition on assault offenses apply only to those whose assault charge or conviction involved family violence.

Jail-based competency restoration. CSHB 12 would establish a statewide jail-based competency restoration program.

For those charged with class B misdemeanors who have been determined incompetent to stand trial, courts would be required to commit them to a jail-based competency program, release them on bond and order them to participate in an outpatient restoration program, or, under certain conditions, commit them to a facility for an initial restoration period. The commitment to the facility could occur only if jail-based and outpatient competency restoration programs were not available.

Defendants charged with class B misdemeanors first would have to be released on bail and ordered to participate in an outpatient competency restoration program, if certain conditions were met. The release on bail would have to occur if a court determined that the defendant was not a danger to others and could be safely treated as an outpatient and if an appropriate program was available. The release would have to include an order to participate in an outpatient restoration program for up to 60 days and be subject to the court approving a comprehensive treatment plan.

Those charged with class A misdemeanors or higher also could be committed to a jail-based competency program or, as current law allows, committed for an initial restoration period to a facility or, if certain conditions were met, released on bail.

Defendants could be committed to jail-based competency restoration programs only if the program provider determined that the defendant would begin receiving services within 72 hours of arriving.

The Health and Human Services Commission would be authorized to develop and implement the jail-based competency restoration program in

any county that chose to participate. The bill would establish criteria for providers of the jail-based competency services and their programs, similar to the criteria in current law for the state's pilot program in this area. CSHB 12 would add criteria requiring that a program operated in a space separate from that used for the general population of the jail, ensure coordination of general health care, provide mental health and substance use disorder treatment, and supply clinically appropriate psychoactive medications when administering court-ordered medications as applicable and in accordance with other laws governing court-ordered medication.

Grant program to reduce recidivism, arrest, incarceration. The Health and Human Services Commission would be required to establish a program to give grants to county-based community collaboratives to:

- reduce recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and
- decrease the wait time for forensic commitment of persons with mental illness to a state hospital.

To receive a grant, community collaboratives would have to include a county, local mental health authority from the county, and each hospital district in the county. The collaboratives would have to provide matching funds from non-state sources that were at least equal to the grant.

For each request for grant funds, the commission would have to estimate the number of cases of serious mental illness in low-income households in the county included in the collaborative. Low-income households would be defined to mean households with total income at or below 200 percent of the federal poverty guidelines. The estimate would have to be used to determine the amounts of grants per a formula in the bill.

CSHB 12 would establish acceptable uses for the grant funds, including the continuation of a mental health jail diversion program, the establishment or expansion of a program, the provision of certain types of treatment and services, the establishment of a rapid response team, and the provision of certain types of beds.

The bill would establish what collaboratives would have to include with

petitions asking for grant funds and the deadlines for submitting petitions, awarding grants, and submitting reports on the effects of the grant money in achieving certain outcomes.

Competency, education services, trial priority. The bill would establish a statutory definition of competency restoration. Competency restoration would be defined as treatment or education for restoring people's ability to consult with their lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings.

Upon receiving notice from a facility or program provider that a defendant had attained competency, a court would have to order the person to receive education about competency services in a jail-based competency restoration program or an outpatient program. If such a defendant had been committed to a facility other than a jail-based facility for restoration, the court would send a copy of the order for education services to the facility where the person was committed and to other involved entities, including the sheriff. The facility would have 10 days to discharge a defendant into the care of the sheriff of the county where the court was located, and the sheriff would be required to transport the person to the jail-based or outpatient competency restoration program for the education services.

Sheriffs would be required to ensure that a defendant for whom they had custody for transportation involving competency restoration was provided with the types and dosages of medication that had been prescribed to the defendant, unless directed otherwise by the treating physician.

The bill would establish a new priority for trial court dockets. Criminal trials involving defendants whose competency to stand trial had been restored would have to be given preference over other civil or criminal matters, except for trials involving victims younger than 14 years old.

Information, reporting. Magistrates would have to submit monthly reports to the Office of Court Administration on the number of assessments they received from experts determining competency to stand trial. The information provided to the magistrate would have to be on a

new form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). Courts no longer would have to forward certain other competency-related reports to TCOOMMI.

The Office of Court Administration (OCA) would be required to provide courts information about best practices to address the needs of persons with mental illness in the court system. OCA also would be required to collect and report on information for fiscal 2018 about specialty courts and the outcomes of court participants who were persons with mental illness.

SUPPORTERS SAY:

CSHB 12 would improve the screening process used for arrestees who may have mental illness or an intellectual disability and would create a jail-based competency restoration program to relieve pressure on state hospitals and to better serve defendants needing competency restored. It would create a statewide grant program to support local programs to divert appropriate individuals with mental illness or intellectual disabilities from jails and lessen their involvement in the criminal justice system. Many of the bill's provisions would implement recommendations from the House's Select Committee on Mental Health and the Texas Judicial Council's Mental Health Committee.

Identification, screening of arrestees. CSHB 12 would improve the coordination of information among officials responsible for the early identification of arrestees with potential mental illness or intellectual disability. These improvements would diminish delays in the identification and treatment in these situations, leading to better outcomes.

The bill would accelerate the deadline for passing along initial information that there was cause to believe an arrestee was a person with mental illness or an intellectual disability to make sure that magistrates had all available information at the hearing held within 48 hours of an arrest. Armed with this notice, magistrates could begin the process of gathering further information and make informed decisions about handling the arrestee. The bill would include municipal jailers in this requirement to pass along notices to magistrates because in some cases jailers can be involved in the initial handling of arrestees. CSHB 12 would not require municipal jailers to perform any assessment or take on any

new duties, but only to provide notices of information they received to magistrates. Having municipal jailers passing along these notices would make sure the process was followed for appropriate defendants without burdening the jailers.

Sheriffs and jailers would be able to meet the timelines in CSHB 12. To meet the requirements, officials just have to pass along whatever information they may have to magistrates, not perform any new duties. The early identification and appropriate handling of inmates with mental illness or intellectual disabilities would end up saving resources and help cases be resolved appropriately.

The bill would expand courts' options by allowing court-ordered exams to take place at the jail or another facility determined appropriate by local mental health authorities. By shortening the timeframes under which the exams had to occur and under which written assessments had to be given back to the courts, it also would ensure courts received information in a more timely way and arrestees did not languish in jail. The shorter timeframes would not burden those doing assessments. The bill would give courts additional options to ensure appropriate handling of defendants by allowing the referral of defendants to specialty courts after receiving information from an assessment.

The bill would include the current duty of magistrates to conduct proceedings in these cases in the statute with provisions establishing the duties of magistrates during the initial hearings that must occur with 48 hours of an arrest. This would tie the two statutes together to help ensure the process took place but would not impose any new duties.

Release on personal bond for certain defendants. CSHB 12 would make sure courts used the current process and criteria to release eligible defendants with mental illness or intellectual disabilities on personal bond. Currently, some courts may not release these defendants but instead apply a bond schedule or standing order developed for all cases as guidelines for release without considering the provisions in current law. These defendants should be handled under the specific law carefully crafted to apply to them, and CSHB 12 would ensure that happened. The bill would protect public safety by requiring magistrates to make certain findings,

including one about the safety of the community, before releasing someone on bond.

CSHB 12 also would remove assault from the list of offenses that can prohibit these releases on personal bond to keep the list focused on the most serious and violent crimes. However, the bill would make sure that when assault involved family violence or someone who could come in contact with the defendant again, release on personal bond would not be an option.

Jail-based competency restoration. CSHB 12 would establish a way for defendants to have their competency restored outside of state hospitals. Currently, most restorations occur in these facilities, which also are used by Texans with mental illness who are not involved in the criminal justice system. Criminal defendants can have long waits in jail for a bed at a state hospital, delaying competency restoration and the resolution of the criminal cases and straining local resources.

CSHB 12 would address this by creating a jail-based restoration program, which would increase courts' options in ways that also would better serve these defendants. With the tiered system that would be established by the bill, courts could order restoration services through outpatient programs, a jail-based program, or the state hospitals.

The jail-based system would be especially useful for those accused of class B misdemeanors. While the maximum jail term for class B misdemeanors is 180 days, in some cases defendants can spend that amount of time waiting for a bed in a state hospital to have competency restored or waiting for a bed and participating in a restoration program. Some cases may have to be dismissed before competency is restored or the case resolved. This can mean that the defendant did not complete treatment and may cycle back through the criminal justice system. While in a state hospital, they may be removed from their community and support system and may be using a bed that might be better used for those accused of more serious crimes. By increasing options for restoring competency, CSHB 12 would allow these cases to be handled effectively and resolved sooner. Courts would continue to have the option of using commitment to a facility for restoration if appropriate.

The jail-based competency restoration programs that CSHB 12 would establish would be an appropriate setting to have competency restored. A program would have to be in a part of the jail that was separate from the general population and would have to meet other standards of care and treatment. Without this option, defendants could spend time in jail waiting for an open bed for restoration instead of starting the restoration process.

The bill would address another problem that can occur if defendants lose their competency after returning to jail due to being given different medications. This can mean another wait for a state hospital bed and a delay in treatment and proceedings. The bill would address this by making sheriffs responsible for ensuring defendants they are transporting were provided with the types and doses of prescribed medication.

CSHB 12 would not create any new standards for deciding who would be involved in competency restoration. The bill focuses on the process used in these cases and could reduce confinements by allowing defendants to receive competency restoration sooner and in a less restrictive setting than the current law allows.

Grant program to reduce recidivism, arrest, incarceration. CSHB 12 would establish a statewide grant program for local collaboratives to divert offenders with mental illness from the criminal justice system. These program could reduce the number of persons in jails with mental illness and reduce wait times for those needing to have competency restored and could encompass a wide range of strategies including early intervention. The program would be based on a successful jail diversion pilot program operated by Harris County. Programs to divert appropriate individuals from local jails and lessen their involvement in the criminal justice system would be better for those with mental illness while easing pressure on resources and preserving them for the most serious cases.

These cooperatives would promote coordination among counties, local mental health agencies, service providers, and other entities. The bill would require matching funds by the cooperatives and allow them to develop their own programs to ensure programs were supported by local entities and tailored to local needs. CSHB 12 would set parameters and

expectations on the programs that would be funded with the grants to make sure they were focused on the desired outcomes of reducing recidivism, the frequency of arrest, and incarceration.

The grant program in the bill would be statewide, instead of being targeted for specific counties because the issues being addressed are statewide. Both larger and smaller counties can have problems with resources, so the bill would spread the grant funds statewide and would take into account need by using the formula in the bill. Apportioning the money statewide would ensure that all Texans had access to help from the grant funds.

Competency, education services, trial priority. CSHB 12 would fill a gap in current law by establishing a statutory definition of competency restoration so all parties could be working under the same guidelines.

The bill would establish a process for those whose competency had been restored to receive education about competency and the criminal justice process in a more appropriate setting than often occurs under current law. Currently, these education services may take place in a medical environment where a person received competency restoration services. It would be more appropriate and cost effective for these defendants to be released from the facility and receive services in an outpatient or jail-based competency program.

The bill would support continuity of care for defendants whose competency had been restored by requiring certain sheriffs to ensure the same medications were provided, unless directed otherwise by a physician. This would help keep defendants competent and prevent them from returning to the competency-restoration process due to a change in their medication.

The bill would help address situations in which trial delays can negatively affect a defendant's competency by making these cases a priority for courts. Preventing defendants from cycling through the competency system would save time and money and lead to better outcomes for defendants as their cases would be resolved sooner.

Information, reporting. CSHB 12 would improve reporting and data gathering in cases involving defendants with mental illness and intellectual disabilities and competency restoration. Courts would have to report to OCA on the number of assessments of defendants so that their frequency and use of assessments statewide could be analyzed, and a uniform assessment form would be developed. The bill also would have OCA collect data from specialty courts about defendants with mental illness so that the effectiveness of these programs on factors such as recidivism could be analyzed and would require OCA to help courts by providing them with best practices to address the needs of persons with mental illness.

OPPONENTS SAY:

The shorter deadlines that would be established by CSHB 12 could strain resources in some counties or with some entities assessing defendants. For example, it could be difficult to get the initial notice that someone may have mental illness or an intellectual disability to a magistrate within four hours as the bill would require. Larger counties with more resources also have more demands on those resources, and smaller counties may not have the resources for such a quick movement of the information.

Jails may not be the appropriate environment to establish options for competency restoration. These programs might be more appropriate for a medical, not criminal justice, environment.

The jail diversion grant program that would be created by the bill should ensure that enough resources were focused on the state's urban areas, which have the greatest population and in many cases the largest needs.

CSHB 12 would continue the system of not treating individuals alleged to have a mental illness the same as other defendants. The bill would not adequately address problems with current law that make it too easy to determine a defendant is incompetent to stand trial, which leads to too many people in our state hospital system.

NOTES:

CSHB 12 would cost the state $54.1 million in fiscal 2018-19, according to the Legislative Budget Board's fiscal note, with costs per year totaling $27 million. The jail-based competency restoration program would cost $17.6 million annually for 10 beds in the state's 10 counties with the

highest level of need, with the demand for services at the state hospitals being reduced, but continuing to exceed capacity. The LBB estimates the grant program that the bill would establish would cost the state $9.4 million per year. The House-passed version of SB 1, the fiscal 2018-19 budget, included $25 million per year contingent on the passage of HB 12 or similar legislation.

SUBJECT: Expanding eligibility to conduct a parent-taught driver education course

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — P. King, Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

WITNESSES: For — Patrick Barrett, Driver's Ed in a Box and Collision Free Driver Ed; Joshua Newman, Texas Home School Coalition

Against — Dorothy DeWalt, Texas Professional Driver Education Association; (*Registered, but did not testify*: Carlos Reyna, Texas Driving Schools)

On — Brian Francis, Texas Department of Licensing and Regulation; Debora Callahan, Texas Professional Driver Education Association

BACKGROUND: Education Code, sec. 1001.112 requires the Texas Commission of Licensing and Regulation to adopt rules for the approval of a parent-taught driver education course, which may be conducted by certain relatives and legal guardians. Anyone conducting such a course must:

- have held a valid license for three years,
- not have had a license suspended, revoked, or forfeited for an offense involving a motor vehicle in the past three years;
- not have been convicted of negligent homicide or driving while intoxicated; and
- not have more than five points assigned to their license at the time the course begins.

DIGEST: CSHB 912 would allow a parent or legal guardian to designate someone to conduct a parent-taught driver education course for his or her child. The designee would have to be at least 25 years old and meet the other requirements laid out by Education Code, sec. 1001.112, but could not

charge a fee for conducting the course. The bill would allow someone convicted of driving while intoxicated more than seven years earlier to conduct a parent-taught driver education course.

CSHB 912 would allow driving schools to teach in multiple classroom locations even if each location did not have the same name as the parent school or was not owned by the parent school. The bill also would remove the requirement that the Texas Department of Licensing and Regulation (TDLR) determine that the driving school owners and instructors were of good reputation and character,

TDLR and course providers would be allowed to issue electronic certificates of completion. The required surety bond for driver education course providers would be reduced from $25,000 to $10,000.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 912 would expand eligibility to conduct parent-taught driver education, relieving a hardship on many parents across the state. Under current law, some parents who are not able or eligible to conduct parent-taught driver education effectively must pay for a traditional driving school. This may heavily burden low-income parents or those who live in rural areas where driving schools may not exist.

The bill would extend the benefit of the parent-taught program by allowing any qualified person close to the family to provide the instruction. Most designees likely would be friends or relatives, and that personal and emotional attachment to the new driver would further encourage the designee to provide quality instruction. Possibly because of this incentive, historically there has been no difference in outcomes between driver education conducted at home as opposed to through a school. This bill would maintain largely the same qualifications for eligibility as under current law, so it would not reduce public safety. However, it would expand the ability of parents to choose how best to provide quality driving instruction to their children.

OPPONENTS SAY:

CSHB 912 would expand the parent-taught driver education program too far. Although reducing hardships on parents is a valid goal, not everyone can teach driver education. Individuals conducting driver education should be required to have a background in driving or teaching because they must operate in a fast-paced learning environment. This can be a problem under the existing system, and this bill would only exacerbate it.

NOTES:

CSHB 3337 differs from the bill as filed in several ways, including that the committee substitute would:

- allow individuals other than peace officers and employees of law enforcement agencies to be designated by a parent;
- allow designees to have been convicted of driving while intoxicated more than seven years earlier;
- allow completion certificates to be issued electronically; and
- revise requirements regarding classroom location, owners and instructors of driving schools, and surety bonds held by course providers.

SUBJECT: Creating a voluntary specialty certification for insurance agents

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Phillips, Muñoz, Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Deborah Polan, AIG; Lee Loftis, Independent Insurance Agents of Texas; Tim Von Kennel, National Association of Insurance and Financial Advisors, NAIFA; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Lee Manross, Texas Association of Health Underwriters; Jennifer Cawley, Texas Association of Life and Health Insurers; Clayton Stewart, Texas Medical Association; David Reynolds, Texas Osteopathic Medical Association; Bonnie Bruce, Texas Society of Anesthesiologists; Greg Herzog, Texas Society of Gastroenterology and Endoscopy and Texas Neurology Society)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

DIGEST: HB 1297 would require the Texas Department of Insurance (TDI) to establish a voluntary specialty certification program for insurance agents who have completed training regarding self-insured health benefit plans. The specialty certification would be open to general life, accident, and health license holders. Those certified by the specialty certification program could advertise, as specified by TDI rule, that they had been specially trained regarding self-insured health benefit plans.

To receive the certification, an individual would be required to:

- complete training in the law applicable to self-insured health benefit plans;

- complete a course applicable to self-insured health benefit plans as prescribed and approved by the insurance commissioner; and
- pass an examination testing the individual's knowledge and qualification.

The commissioner of insurance would certify that the individual had completed the course and passed the examination and could adopt rules as necessary to administer the specialty certification. The bill would require individuals to continue to hold a general life, accident, and health license in order to maintain the certification.

Individuals could obtain the specialty certification without completing the required course and examination if they demonstrated to TDI that they held a designation as a registered health underwriter (RHU), certified employee benefit specialist (CEBS), or a registered employee benefits consultant (REBC).

To renew the specialty certification, a certified individual would be required to complete continuing education relevant to self-insured health benefit plans within the two-year certification period. The commissioner would rule to set requirements for continuing education. Each hour of education completed to obtain or renew the specialty certification could be used to satisfy an hour of continuing education otherwise applicable to insurance agents.

TDI would maintain and publish a list on its website of all individuals who held the specialty certification in self-insured plans, together with each individual's business address, phone number, and service area.

TDI could begin issuing these specialty certifications by January 1, 2018. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

HB 1297 would provide insurance agents with the opportunity to receive a certification that acknowledged their expertise in "self-insured" health plans. These health plans are different from conventional fully insured health plans in that they provide financial protection for employers, not medical benefits for employees. With these plans, employers retain all risk of medical care costs for those covered by the plan but they offer small

businesses a way to cut costs.

Many employers are familiar only with fully insured plans and need information about the vast differences between self-insured plans and other health benefit plans. A recent study also found that consumers lacked information about the definition of a copay, deductible, and other common insurance terms. The bill would promote health literacy and understanding of this insurance option among consumers and patients by creating this voluntary designation.

Insurance agents and brokers are often trusted resources for health plan information, and this specialty certification would increase the ability of agents to share information with employers regarding the specifics of these plans, resulting in a clearer, deeper understanding by employers on this option.

OPPONENTS SAY:

No apparent opposition.

NOTES:

A companion bill, SB 770 by Watson, was referred to the Senate Business and Commerce Committee on February 22.

SUBJECT: Continuing the Texas State Board of Pharmacy, modifying regulations

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

WITNESSES: For — (*Registered, but did not testify*: Amanda Martin, Texas Association of Business; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Justin Hudman, Texas Pharmacy Association)

Against — None

On — Steven Ogle, Sunset Advisory Commission; Gay Dodson, Texas State Board of Pharmacy; (*Registered, but did not testify*: Allison Benz, Texas State Board of Pharmacy)

BACKGROUND: The Texas State Board of Pharmacy was created in 1907 to examine and certify pharmacists. Its mission is to protect public health, safety, and welfare by fostering the provision of quality pharmaceutical care.

Functions. Since its establishment, the board's responsibilities have expanded beyond licensing pharmacists to include registering pharmacy technicians, interns, and trainees, overseeing pharmacy standards and operations, and investigating and resolving complaints against practitioners licensed or registered with the board.

Governing structure. The board is composed of 11 governor-appointed members who serve staggered six-year terms. Seven members are licensed pharmacists, one member is a registered pharmacy technician, and the remaining three members are public representatives. The governor selects from these members a board president, and the members elect a vice-

president and treasurer.

Funding. In fiscal year 2015, the board spent $6.7 million. Its main expenditures were enforcement of standards and policies, licensing costs, and peer assistance. The board transferred $4.2 million generated in excess of the agency's appropriation to the General Revenue Fund in fiscal 2015.

Staffing. The board employed 88 staff members in fiscal 2015, with 67 working in its main office and 21 working throughout the state conducting investigations and inspections.

The board's last Sunset review was in 2005 during the 79th regular session, when SB 410 by Whitmire extended the existence of the board by 12 years. This bill also took several measures to alter registration practices, including:

- authorizing the board to enforce certain disciplinary measures;
- establishing an online registry of licensed pharmacies and pharmacists; and
- imposing a registration requirement on pharmacy technician trainees.

The board will be discontinued on September 1, 2017, if not continued in statute.

DIGEST:

CSHB 2561 would continue the Texas State Board of Pharmacy until September 1, 2029.

The bill also would take multiple measures related to statewide monitoring and regulation of controlled substances, including:

- requiring pharmacists to review a patient's prescription history before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol;
- requiring prescription drug wholesale distributors to submit to the board the information they must already report to the Federal Drug

Enforcement Administration;

- shortening the time frame in which pharmacists are required to submit electronic prescription records to the board from seven days after dispensing to one day after dispensing;
- requiring the board to identify prescriber and patient behaviors that suggest drug diversion or abuse; and
- authorizing the board to notify a dispenser or a prescriber whose prescription records suggest potential prescription drug abuse or diversion.

The bill would remove the "good moral character" requirement for licensure as a pharmacist or registration as a technician or trainee.

The bill also would require the board to develop a policy encouraging negotiated rulemaking and alternative dispute resolution in conformity with the Sunset Advisory Commission's across-the-board policies and would modify board member training curriculum in conformity with such policies.

The bill would create a graduated schedule of late renewal fees for pharmacy technicians and implement this schedule as soon as practicable. Technicians renewing their registration late would be charged:

- one and a half times the normal fee if the registration had been expired for 90 days or less; or
- twice the normal fee if the registration had been expired for more than 90 days, but no more than one year.

Technicians whose registration had been expired for more than one year would not be permitted to automatically renew their registration.

The bill would require the board to adopt rules concerning continuing education requirements for registered pharmacy technicians. These rules would have to include the hours, methods, approval, reporting, and records of continuing education requirements, as well as board audits.

The bill also would allow the board to refuse renewal of a license to

practice pharmacy or registration as a pharmacy technician when an applicant was in violation of a board order.

The bill would authorize the board to designate duties to its executive director.

The bill's training requirements would apply to all board members, and members appointed before the effective date would be required to complete only the training on subjects added by the bill. Any board members who had failed to complete the training by December 1, 2017, could not vote, deliberate, or be counted in attendance at a board meeting.

The bill would take effect on September 1, 2017, and would apply only to renewal applications filed on or after that date. Pharmacists would have to comply with the bill's prescription reporting and monitoring requirements by January 1, 2018.

SUPPORTERS SAY:

CSHB 2561 would continue an effective program critical to public health and safety. The Texas State Board of Pharmacy increases the quality of pharmaceutical care in the state by conducting transparent and efficient regulation practices.

The bill would allow pharmacists to better combat the growing threat of prescription drug abuse by requiring them to adhere more closely to the Prescription Monitoring Program (PMP). By narrowing the time frame in which pharmacists must enter prescription information into the PMP database from one week to one day and requiring pharmacists to consult the database before dispensing certain substances, the bill would reduce the ability of people misusing drugs to receive prescriptions from multiple doctors.

The bill would reduce the potential for subjectivity in the licensing process by removing the requirement that pharmacists and technicians be of "good moral character" to be licensed or registered. State law already establishes hiring guidelines, and this vague requirement could be applied disproportionately or misused to deny a license.

The bill would allow technician renewal late penalties to accomplish their

intended purpose by adopting a graduated late renewal fee structure. Late renewal fees are not intended to be overly burdensome but to encourage timely renewal. By mirroring the graduated fee structure currently used for pharmacists, the bill would provide greater incentive for technicians to renew their registration as soon as possible.

The bill also would streamline the board's rulemaking, dispute settlement, and continuing education processes by bringing them into conformity with the Sunset Advisory Commission's across-the-board policies.

The bill's PMP consultation requirement would not significantly burden pharmacists. Pharmacists have the authority to delegate this responsibility to technicians, and the software allows quick access to prescription history and warning signs of prescription drug abuse. Doctors have their own methods to identify abuse, but pharmacists have a corresponding responsibility to ethically dispense medicine, and only they can identify fraud in the prescription-filling stage.

OPPONENTS SAY:

CSHB 2561 could interfere with the ability of pharmacists to fill prescriptions quickly and efficiently. Requiring pharmacists to consult the PMP database each time they dispensed one of the controlled substances listed by the bill would be burdensome and could interfere with professional judgment by encouraging pharmacists to dispute the prescriptions and decisions of doctors.

NOTES:

A companion bill, SB 306 by V. Taylor, was referred to the Senate Health and Human Services Committee on March 6.

SUBJECT: Requiring higher education institutions to link to mental health resources

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

WITNESSES: For — (*Registered, but did not testify*: Cynthia Humphrey, Association of Substance Abuse Programs; Bill Kelly, City of Houston Mayor's Office; Reginald Smith, Communities for Recovery; Kathryn Lewis, Disability Rights Texas; Eric Woomer, Federation of Texas Psychiatry; Gyl Switzer, Mental Health America of Texas; Christine Yanas, Methodist Healthcare Ministries; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Eric Kunish, National Alliance on Mental Illness Austin Advocacy Chair; Will Francis, National Association of Social Workers - Texas Chapter; Josette Saxton, Texans Care for Children; Marshall Kenderdine, Texas Academy of Family Physicians; Lee Johnson, Texas Council of Community Centers; Jan Friese, Texas Counseling Association; Aidan Utzman, United Ways of Texas; Aliyah Ali; Rajitha Reddy)

Against — None

BACKGROUND: Education Code, sec. 51.9193 requires public higher education institutions to create and maintain a web page on their website devoted solely to available mental health resources for students at the institution in addition to the address of the nearest local mental health authority.

DIGEST: HB 2895 would direct public higher education institutions to incorporate on the web page required under Education Code, sec. 51.9193 available mental health resources regardless of whether the resources were provided by the institution. Each institution would have to maintain a conspicuous link on the institution's website home page to the mental health resources web page. Institutions would have to comply with these requirements by

December 1, 2017.

By August 1 of each year, the president or a designee of an institution would certify to the Texas Higher Education Coordinating Board the institution's compliance with the bill's provisions.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

HB 2895 would strengthen enforcement of current law by requiring a conspicuous link on the public higher education institution's website home page to the web page dedicated to mental health services available to students. This would increase student awareness of accessible mental health resources, which could decrease college dropout rates. Some surveys report about two-thirds of former college students are no longer attending college because of a mental health condition. The bill would ensure that noncompliant institutions met the required posting of mental health resources.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Modifying offenses related to misrepresentation as law enforcement

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Wray

1 nay — Schaefer

1 absent — P. King

WITNESSES: For — (*Registered, but did not testify*: Bill Elkin, Houston Police Retired Officers Association; Mitch Landry, Texas Municipal Police Association (TMPA))

Against — None

BACKGROUND: Local Government Code, sec. 341.904 makes it a crime for a person in a municipality with a population of at least 1.18 million that is located in a county of at least 2 million to intentionally or knowingly use, possess, or wear a police identification item or an item deceptively similar or to use, possess, or operate a marked patrol vehicle that is deceptively similar to a department patrol vehicle.

Penal Code, sec. 37.12 makes it a crime for a person who is neither a peace officer nor a reserve law enforcement officer to make, provide, or possess an item bearing an insignia of a law enforcement agency that falsely identifies a person as a peace officer or a reserve law enforcement officer. It also is a crime to misrepresent an object as property belonging to a law enforcement agency.

The above offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000).

DIGEST: CSHB 683 would extend the offense for the false possession or use of law enforcement identification items or vehicle to all municipalities in Texas by removing the population limitation.

The bill would modify the conduct that constitutes the offense of false identification as a peace officer to include making, providing, or possessing a vehicle bearing an insignia of a law enforcement agency. An item bearing an insignia of a law enforcement agency could include one containing the word "police," "sheriff," "constable," "trooper," "ranger," "agent," or any other designation commonly used by law enforcement agencies.

To the conduct that constitutes the offense of misrepresentation of property, the bill would add misrepresenting a vehicle as property belonging to a law enforcement agency.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 683 would address concerns that current law does not explicitly prohibit individuals from placing on their vehicles a designation commonly used by law enforcement. Under current law, it is a crime for a person to make, provide, or possess an item bearing an insignia of a law enforcement agency if they are not a law enforcement officer. It is also a crime to misrepresent an object as property belonging to a law enforcement agency. However, it is unclear whether these offenses apply to vehicles, creating a gap in statute that has been understood to allow security companies to put these items on their vehicles.

Vehicles of numerous security companies have been observed with the words "police" or another word that could make the public believe they were a licensed police officer. This bill would close the gap in current statute by modifying existing penalties to include vehicles and expand the definition of what constitutes a designation commonly used by law enforcement.

The use of an insignia associated with law enforcement by private security officers could violate public trust. A bad experience with a security guard could lead the public to doubt or not trust law enforcement. The private security industry is aware that there are bad actors who try to fool the public into thinking they are law enforcement and supports measures to address these issues.

OPPONENTS SAY:

CSHB 683 is unnecessary because Occupations Code, sec. 1702.130 already prohibits a private security company from using a title, an insignia, or an identification card or from wearing a uniform containing the designation "police." Instead of modifying existing penalties relating to falsely identifying as a peace officer, misrepresenting property, and the possession or use of law enforcement items or vehicle, it would be more effective to clarify provisions in the Occupations Code specific to private security.

OTHER OPPONENTS SAY:

Although important to ensuring public trust of law enforcement in communities, CSHB 683's definition of an item bearing an insignia of a law enforcement agency would be too broad. For example, the word "agent" is listed as a designation commonly used by law enforcement, but other industries may use the word on their vehicles as well. Therefore, the bill could have unintended consequences for people in other such industries, potentially subjecting them to unwarranted criminal penalties.

SUBJECT: Requiring policies that consider probationers' work and service schedules

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — White, Allen, S. Davis, Romero, Sanford

2 nays — Schaefer, Tinderholt

WITNESSES: For — Doots Dufour, Diocese of Austin; Jorge Renaud, Texas Advocates For Justice; Mary Kate Bevel, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Traci Berry, Goodwill Central Texas; Ellen Arnold, Texas Association of Goodwills; Jennifer Erschabek and Patricia Kassel, Texas Inmate Families Association (TIFA); Jeff Gifford; Sally Gifford; Lauren Johnson; Lauren Oertel; Debra Sanner; Gary Wardian;)

Against — David Daniel, Kaufman County Community Supervision and Corrections Department, Texas Probation Association

On — (*Registered, but did not testify*: Carey Welebob, Texas Department of Criminal Justice)

BACKGROUND: Government Code, ch. 76 governs community supervision and corrections departments, which are county-level agencies that oversee defendants on probation.

DIGEST: HB 1504 would require community supervision and corrections departments to adopt a policy that supervising officers consider defendants' work, treatment, or community service schedule when planning any required meetings or visits.

The bill would take effect September 1, 2017, and departments would need to adopt a policy by January 1, 2018.

SUPPORTERS SAY: HB 1504 would make it easier for defendants to comply with the terms of probation. This would improve cooperation between defendants and

supervising officers and increase the likelihood of a defendant successfully completing a term of probation. It also save money by avoiding incarceration resulting from a technical revocation for missing mandatory appointments. Local departments could develop their policies for local circumstances, as well as defendants' schedules. Departments would be best positioned to evaluate their staffing needs and available resources..

OPPONENTS SAY:

HB 1504 could further stress county resources. County agencies already struggle to meet their obligations with existing funding. Requiring them to accommodate each individual's personal circumstances and schedules would become unnecessarily burdensome.

SUBJECT: Releasing certain misdemeanants after serving time, pending appeal

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Moody, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Hunter

WITNESSES: For — Ted Wood, Harris County Public Defender's Office; (*Registered, but did not testify*: Mary Mergler, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Thomas Parkinson)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 44.04 entitles criminal defendants to be released on reasonable bail when there is a pending decision about a motion for a new trial or an appeal from a misdemeanor conviction.

DIGEST: HB 1442 would entitle a criminal defendant awaiting a decision on a request for a new trial or an appeal from a misdemeanor conviction to be released after completing the sentence of confinement. Courts could require such defendants to give personal bonds, but could not require any condition on a personal bond, another type of bail bond, or a surety or other security.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1442 would ensure that criminal defendants who completed their entire jail terms for misdemeanor offenses were not kept in jail because of an oversight in current law related to appeals bonds.

In some cases, a person serving a jail term for a misdemeanor who appeals the conviction is entitled under current law to a bond pending that appeal.

Defendants who cannot make bail stay in jail, and some remain there after serving their entire sentences because of the decision making their release dependent on bail.

If defendants have served their time, there is no justification for keeping them in jail any longer, and HB 1442 would provide a mechanism for their release. Bail is designed to ensure someone returns to court, and in these cases the court is not concerned with defendants showing up for their own appeals. Under the bill, counties would save money and jail space would be available for those who need to be confined, which would improve public safety.

The bill would implement this common-sense provision by entitling such defendants to be released pending any motion for retrial or an appeal and by authorizing courts to require them to post a personal bond. Under a personal bond, defendants agree to return to court and to comply with its conditions without being required to post cash or surety. The bill would prohibit the placement of conditions on the personal bond or requirements for any other type of bond.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Adopting Sunset recommendations for the Sulphur River Basin Authority

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Lucio, Nevárez, Price, Workman

0 nays

WITNESSES: For — Fred Milton, Riverbend Water Resources District; John Jarvis and Wally Kraft, Sulphur River Basin Authority; (*Registered, but did not testify*: Bret McCoy, Sulphur River Basin Authority)

Against — None

On — (*Registered, but did not testify*: Sarah Kirkle, Sunset Advisory Commission)

BACKGROUND: The Legislature created the Sulphur River Basin Authority (SRBA) in 1985 to conserve and develop natural resources in the basin, located in northeast Texas.

Functions. SRBA may build and operate reservoirs, sell raw and treated water, conduct wastewater treatment, acquire property by eminent domain, build and manage park land, and generate electricity. SRBA studies the feasibility of developing water resources of the Sulphur River basin and monitors water quality under the Texas Clean Rivers Program.

Governing structure. SRBA is governed by a seven-member board appointed by the governor with the advice and consent of the Senate. The board comprises two members from each of the three regions of the basin and one at-large member, all of whom serve six-year staggered terms. The board meets monthly and elects a president to serve a two-year term.

Funding. SRBA receives no state appropriation. In fiscal 2015, SRBA collected about $745,000 and spent about $1 million. Around 84 percent of funding comes from member cities and water districts in the Dallas-

Fort Worth metroplex. The authority is not authorized to assess taxes.

Staffing. In fiscal 2015, SRBA had one employee, an administrator. The authority also contracts with a consultant to manage its contracts for the feasibility study.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjects the Sulphur River Basin Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

CSHB 2180 would adopt certain Sunset Advisory Commission recommendations for the Sulphur River Basin Authority (SRBA). The bill also would require the SRBA to undergo Sunset review again as if it were a state agency scheduled to be abolished September 1, 2029.

Board of directors. CSHB 2180 would require the terms of the current members of the board of directors of the SRBA to expire on September 1, 2017. Current members could vote, deliberate, and be counted as a director until December 1, 2017. The governor would have to make new appointments by September 2, 2017, and could reappoint a board member whose term expired under the bill.

The governor also would designate a member as the presiding officer of the board and the position of president would be removed.

Training and other policies. CSHB 2180 also would establish procedures to train board members on policies including public information requirements and laws applicable to the authority. An individual who was appointed to the board could not vote, deliberate, or be counted as a before completing the training program. The board would distribute a copy of the training manual to each member annually.

The board would have to develop a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures that conform to guidelines issued by the State Office of Administrative Hearings to the extent possible.

The bill also would require the board to develop and implement policies

clearly separating the policymaking responsibilities of the board and the management responsibilities of the executive director and staff.

Permits for proposed projects. The board of the SRBA would be required to obtain advice on a proposed project from each county judge in the proposed area before voting on a project for which a permit would be sought.

Complaints and legal notice. The SRBA would be required to maintain a system to promptly and efficiently act on complaints filed with the authority. It would maintain certain information relating to the complaints and would make information available describing procedures for complaint investigation and resolution. The authority would have to periodically notify the complaint parties of the status of the complaint, until final disposition.

Authority. CSHB 2180 would remove authorization for the SRBA to aid in the foresting of the watershed area, furnish solid waste collection, acquire land for park and recreational purposes, or develop hydroelectric power.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 2180 would adopt certain recommendations from the Sunset review of the Sulphur River Basin Authority (SRBA), making important changes to an authority that has been involved in regional controversies over a proposed reservoir project. The board's contract monitoring lacks detail, and the authority has provided limited oversight and accountability measures and insufficient transparency. The bill would expire the terms of current members of the SRBA board and create a training process for new directors, resulting in a properly trained board.

The board of directors also would have to develop certain policies to separate the duties of the executive director from the board and to promote alternative dispute resolution methods. These policies would increase the efficiency of the SRBA, especially within the center of a huge state water fight.

The bill would adopt other necessary Sunset recommendations. The SRBA would maintain a system on the status of complaints against the authority, making the complaint process more open. The board also would have to reach out to local entities when seeking a permit for a proposed project, which would further increase transparency and cooperation in the region.

The governor should have the authority to appoint members to the board of the SRBA at his discretion, which would be granted by CSHB 2180.

OPPONENTS SAY:

CSHB 2180 would leave out an important Sunset recommendation to immediately replace the current board of directors. The committee substitute added language to the bill that would authorize the governor to reappoint any member whose term expired under the bill on September 1, 2017. The authority should have a new board of directors going forward.

NOTES:

The committee substitute removed language from the filed bill that would have prevented a person appointed to the SRBA board of directors on or before January 1, 2016, from being eligible for reappointment.

A companion bill, SB 308 by Nichols, was referred to the Senate Committee on Agriculture, Water, and Rural Affairs on March 6.

SUBJECT: Establishing commercial license buyback subaccount in TPWD

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

VOTE: 6 ayes — Frullo, Faircloth, Fallon, Gervin-Hawkins, Krause, Martinez

0 nays

1 absent — D. Bonnen

WITNESSES: For — Shane Bonnot, CCA Texas; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Cyrus Reed, Lone Star Chapter Sierra Club; John Shepperd, Texas Foundation for Conservation; Elizabeth Doyel, Texas League of Conservation Voters, Buddy Treybig; Tracy Woody)

Against — None

On — (*Registered, but did not testify*: Robin Riechers, Texas Parks and Wildlife Department)

BACKGROUND: Parks and Wildlife Code, sec. 77.120 establishes the shrimp license buyback account as a separate account in the general revenue fund.

Parks and Wildlife Code, sec. 47.081 governs the finfish license buyback program and sec. 78.111 governs the crab license buyback program.

Some have called for these separate license buyback programs and accounts to be consolidated under one account in order to provide the Texas Parks and Wildlife Department more flexibility in managing the state's overall fishing industry.

DIGEST: *The author intends to offer a complete floor substitute in lieu of CSHB 1724. The floor substitute is summarized in the Digest below.*

CSHB 1724 would merge the shrimp license buyback account and the crab and finfish buyback programs into a new account called the

commercial license buyback subaccount, within the game, fish, and water safety account.

The Texas Parks and Wildlife Department (TPWD) would deposit into the commercial license buyback subaccount:

- at least 20 percent of fees from issuing or transferring finfish licenses, which currently is set aside under the finfish license buyback program;
- at least 20 percent of fees from commercial crab licenses, which currently is set aside under the commercial crab license buyback program;
- revenue collected on commercial bay or bait shrimp boat license transfers;
- $25 of each issued wholesale fish dealer's license;
- $25 of each issued wholesale truck dealer's fish license;
- $6 of each issued retail fish dealer's license;
- $11 of each issued retail dealer's truck license;
- $25 of each issued commercial bay shrimp boat license;
- $25 of each issued commercial bait-shrimp boat license;
- $25 of each issued commercial gulf shrimp boat license;
- $15 of each issued bait-shrimp dealer's license; and
- revenue from any other source authorized by law.

TPWD could accept grants and donations from public or private sources to support the commercial license buyback subaccount. Money in the subaccount could be used only to buy back a license from a willing commercial license holder, and the subaccount would not be subject to Government Code, sec. 403.095 regarding the use of dedicated revenue.

The shrimp license buyback account would be abolished on September, 1, 2017, and the unencumbered balance of the account would be deposited in the commercial license buyback subaccount.

The bill would take effect September, 1, 2017.

NOTES:

The floor substitute differs from the committee substitute in several ways.

The committee substitute would have created a commercial license buyback account as a separate account in the general revenue fund and deposited various licensing fees into the new account, which also would have included the balance of the shrimp license buyback account abolished by the bill.

The floor substitute instead would direct all funds identified the bill to the new commercial license buyback subaccount account within the game, fish, and water safety account, including the balance of the shrimp license buyback account, which it also would abolish.

SUBJECT: Allowing mental health treatment forms to be notarized

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Arévalo, Burkett, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

2 absent — Coleman, Collier

WITNESSES: For — Craig Hopper, State Bar of Texas Real Estate Probate and Trust Law Section (REPTL); (*Registered, but did not testify*: Christine Yanas, Methodist Healthcare Ministries; Marilyn Hartman, National Alliance on Mental Illness (NAMI) Austin; Greg Hansch, NAMI Texas)

Against — None

BACKGROUND: Under Civil Practice and Remedies Code, ch. 137, a person may execute a declaration for mental health treatment, which outlines preferences for use of convulsive treatment, psychoactive medications, and emergency treatments in the event that a court determined the person's capacity to make mental health treatment decisions was impaired. The declaration form must be signed in front of at least two subscribing witnesses. A witness may not be the person's health care provider, operator of a facility providing care to the person, related to the person by blood, marriage or adoption, entitled to any part of the person's estate after death, or have any part of a claim to the person's estate.

Some observers have suggested the code could be updated to provide another option for persons seeking to execute a declaration for mental health treatment.

DIGEST: HB 1787 would allow a person to execute a declaration for mental health treatment if the declaration form was signed by the person and acknowledged before a notary public.

The bill would take effect September 1, 2017, and would apply to a declaration executed on or after that date.

NOTES:

A companion bill, SB 819 by Rodríguez, was referred to the Senate Committee on Health and Human Services on February 27.

SUBJECT: Changing compensation comparisons for fire fighters and police officers

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Alvarado, Bernal, Elkins, Isaac, J. Johnson

0 nays

2 absent — Leach, Zedler

WITNESSES: For — Michael Glynn, Fort Worth Firefighters Association and International Association of Fire Fighters Local 440; Johnny Villarreal, Houston Fire Fighters Local 341; (*Registered, but did not testify*: David Crow, Arlington Professional Fire Fighters; Bob Nicks, Austin Firefighters Association; Charley Wilkison, Combined Law Enforcement Associations of Texas (CLEAT); Rob Gibson, Fort Worth Firefighters Association; Aidan Alvarado, David Gonzalez and Rolando Solis, Laredo Fire Fighters Association; Michael Silva, Mission Fire Fighters Association; John Carlton, Texas State Association of Fire and Emergency Districts; Glenn Deshields, Texas State Association of Fire Fighters)

Against — None

BACKGROUND: Local Government Code, ch. 174 establishes the Fire and Police Employee Relations Act (FPERA). Under the act, a municipality must provide fire fighters and police officers with compensation and other conditions of employment that are substantially equal to those in the private sector.

When FPERA was enacted, it was intended to allow fire fighters and police departments to compare their compensation and working conditions with those of various jobs in the private sector, often including the building trades, that required similar skills, abilities, and training. Some observers have suggested that these private sector trades differ significantly from the work of fire fighters and police and question whether they are useful comparisons.

DIGEST:

HB 3193 would require a municipality to provide firefighters and police officers with compensation and other conditions of employment substantially equal to those of other comparable fire and police departments, rather than compensation and conditions prevailing in comparable private sector employment.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 1961 by Lucio, was referred to the Senate Intergovernmental Relations Committee on March 27.

SUBJECT: Adopting certain Sunset recommendations for the PDRA

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Lucio, Nevárez, Price, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: Claudia Russell, Palo Duro River Authority)

Against — None

On — (*Registered, but did not testify*: Dee Vaughan, Commissioner, Moore County; Sarah Kirkle, Sunset Advisory Commission)

BACKGROUND: The Palo Duro River Authority (PDRA) was created by the Legislature in 1973 to construct a dam and reservoir to supplement municipal water supplies.

Functions. PDRA may build and operate reservoirs, sell raw and treated water, acquire property by eminent domain, and build and manage park land. It currently operates the Lake Palo Duro dam and reservoir and manages the surrounding park.

Governing structure. The authority is governed by a nine-member board appointed by the commissioners courts of Hansford County and Moore County and by the city council of Stinnett. Members serve two-year staggered terms. The board meets monthly and elects a president annually.

Funding. PDRA receives no state appropriation. In fiscal 2015, PDRA collected about $462,000 and spent about $413,000. Its primary source of revenue is from property taxes.

Staffing. In fiscal 2015, PDRA employed a general manager, an administrative assistant, and two full-time maintenance staff.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjected the Palo Duro River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

CSHB 1920 would reclassify the Palo Duro River Authority (PDRA) as the Palo Duro Water District. The bill also would adopt certain recommendations from the Sunset Advisory Commission, including across-the-board recommendations.

Reclassification of the PDRA. The Palo Duro River Authority would be reclassified as a local water district called the Palo Duro Water District. All current references to the PDRA would be changed to reflect the reclassification.

The bill also would remove a provision of statute subjecting the PDRA to limited review by the Sunset Advisory Committee.

District activities. The bill would permit the Palo Duro Water District to develop and generate electric energy inside its boundaries. The district could sell the electric energy to an entity in the Electric Reliability Council of Texas power region, an entity in the Southwest Power Pool power region, or an electric cooperative.

The district also could lease the hunting rights on its property and develop, manage, or lease property for any recreational purpose.

The bill would remove a provision stating that the district could not develop or acquire groundwater.

Withdrawal or dissolution of district. A county or municipality in the district could withdraw from the district or the district could be dissolved. The governing body of a member entity would have to issue an order or pass a resolution declaring the intent to withdraw from or dissolve the district. The order or resolution also would state the reasons supporting the withdrawal or dissolution.

For a withdrawal, member entities would have to reach a financial

agreement that provided for sufficient revenue to maintain the Palo Duro Reservoir and dam. For dissolution of the district, member entities would have to provide for the transfer of the ownership rights of the dam, assets and liabilities of the district and the responsibility for the continued provision of services.

The district would be required to hold a public hearing on withdrawal or dissolution no later than 30 days after receiving an order or resolution from a member entity. The board also would have to provide an opportunity for the public to comment on the financial agreement for a period of at least 10 days.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 1920 would adopt certain Sunset recommendations to more accurately classify the Palo Duro River Authority (PDRA) as a local water district and allow the authority to engage in certain revenue-generating activities. Because the PDRA does not manage a river, it would be more appropriately classified as a water district. Authorizing the district to generate electricity and lease land for hunting would generate funds and reduce reliance on property tax revenue.

The bill could be amended to restore language in current law stating that the PDRA was not authorized to develop or acquire underground sources of water.

OPPONENTS SAY:

CSHB 1920 would remove language in current law stating that the Palo Duro River Authority was not authorized to develop or acquire groundwater, unnecessarily giving the district the ability to take water from certain member counties, potentially neglecting those citizens' property rights.

NOTES:

The committee substitute differs from the filed bill in certain ways, including that CSHB 1920 would repeal language in current law stating that the PDRA is not authorized to develop or acquire underground sources of water.

A companion bill, SB 309 by Nichols, was referred to the Senate

Committee on Agriculture, Water, and Rural Affairs on March 6.

SUBJECT: Creating uniform procedures to prevent wrongful convictions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — Staley Heatly, 46th District Attorney; Michael Morton, Innocence Project; Gary Udashen, Innocence Project of Texas; Christopher Ochoa, New York Innocence Project; Olga Flores; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Michael Boulette, Archdiocese of San Antonio; Chas Moore and Alexandra Peek, Austin Justice Coalition; Kathryn Freeman, Christian Life Commission; Curtis Guillory, Diocese of Beaumont; Daniel Flores, Diocese of Brownsville; Robert Coerver, Diocese of Lubbock; Joseph Strickland, Diocese of Tyler; Elizabeth Ramirez, Cassandra Rivera, and Anna Vasquez, Innocence Project of Texas; Patricia Cummings, Innocence Project of Texas and Innocence Project of New York; Gloria Leal, Mexican American Bar Association of Texas; Michael Johnson, Proclaim Justice; Mary Mergler, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Trey Owens and Douglas Smith, Texas Criminal Justice Coalition; Amanda Marzullo, Texas Defender Service; Emily Gerrick, Texas Fair Defense Project; Haley Holik, Texas Public Policy Foundation; and eight individuals)

Against — None

On — David Slayton, Texas Judicial Council; (*Registered, but did not testify*: John Helenberg, Texas Commission on Law Enforcement; Shannon Edmonds, Texas District and County Attorneys Association (TDCAA))

BACKGROUND: The Timothy Cole Exoneration Commission was created by the 84th Legislature to review cases in which an innocent person was convicted and later exonerated in Texas on or after January 1, 2010. The goal of the

commission was to identify areas of law where legislative reform would be beneficial in preventing wrongful convictions. The commission submitted a report of its findings and recommendations. The report made several recommendations, including recommendations related to photograph and live lineup procedures, custodial interrogations, jailhouse informants, and forensic science.

Code of Criminal Procedure, art. 38.20 requires law enforcement agencies to adopt and implement detailed written policies on the administration of photograph and live lineup identification procedures. Agencies may adopt the state's model policy or a policy based on credible research on eyewitness memory designed to reduce incorrect identifications and enhance reliability and objectivity. The written policy also must address:

- selection of filler photographs or live lineup participants;
- instructions to the witness before the identification procedure;
- documentation and preservation of results of the procedure, including witness statements, regardless of the outcome of the procedure; and
- when practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect or alternative procedures designed to prevent opportunities to influence the witness.

Failure to conduct an identification procedure in substantial compliance with the agency's policy does not bar admission of the eyewitness's testimony in court.

Art. 38.22, sec. 3(a) establishes that oral or sign language statements made as a result of a custodial interrogation by a person accused of a crime are not admissible in court unless an electronic recording is made of the statement and:

- during the recording, prior to the statement, a Miranda warning was given and the accused knowingly and voluntarily waived the rights set out in the warning;
- the operator was competent and the recording is accurate and has

not been altered;

- all voices on the recording are identified; and
- at least 20 days before the proceeding, the attorney representing the defendant is given a true, complete, and accurate copy of all recordings made.

DIGEST:

CSHB 34 would create uniform standards for certain law enforcement procedures, including suspect identification, custodial interrogations, the use of jailhouse informants, and forensic science.

Photograph and live lineup procedures. The bill would require a law enforcement agency's detailed written policy regarding the administration of photograph and live lineup identification procedures to include:

- procedures for selecting filler photographs or participants to ensure that they appeared consistent with the description of the alleged perpetrator and that the suspect did not noticeably stand out;
- instructions including a statement noting that the perpetrator might or might not be present and the investigation would continue with or without the witness's identification of a person; and
- procedures for assigning an administrator who was unaware of which member of the live lineup was the suspect in the case, without allowing for alternative procedures or considering whether doing so was practicable.

A witness making an identification based on one of these identification procedures immediately would be asked to state the witness’s level of confidence in the identification. This statement would have to be documented.

Before an in-court eyewitness identification could be admitted as evidence, it would have to be accompanied by details of any prior identification of the accused made by the witness, including the manner in which that identification procedure was conducted and evidence showing the witness's confidence level at the time of the prior identification.

The bill would require the Texas Commission on Law Enforcement, by

January 1, 2018, to include in the minimum curriculum requirements for law enforcement officers a statewide comprehensive education and training program on eyewitness identification, including variables that affect a witness's vision and memory, practices for minimizing contamination, and effective eyewitness identification protocols.

Custodial interrogations. Law enforcement agencies would have to electronically record any custodial interrogation of a person accused of a felony offense for any statement resulting from that investigation to be admissible in court, except under certain circumstances. These recordings would be exempt from public disclosure.

A statement of any kind made as a result of a custodial interrogation by a person would be admissible in court without an electronic recording if the attorney introducing the statement showed good cause for its lack. Good cause could include:

- the accused person refused to respond to questioning or to cooperate in the interrogation and a recording of the refusal was made or attempted in good faith and documented in writing;
- the statement did not exclusively result from a custodial interrogation, including one made spontaneously by the accused and not in response to an officer’s question;
- the agent conducting the interrogation attempted in good faith to record the interrogation but was unsuccessful due to operator or equipment error;
- exigent public safety concerns prevented or rendered infeasible the making of an electronic recording; or
- at the time the interrogation began, the agent reasonably believed the accused was not being interrogated concerning the commission of a felony.

Jailhouse informants. The bill would make several changes regarding proffered testimony of a person to whom a defendant made a statement against the defendant's own interest while the person and defendant were confined or imprisoned in the same correctional facility. Attorneys representing the state would have to track the use of this testimony,

regardless of whether it was presented at trial, as well as any benefits offered or provided in exchange for this testimony.

If the state intended to use this testimony at trial, it would have to disclose to the defendant:

- the person's complete criminal history, including any dismissed or reduced charges resulting from a plea bargain;
- any leniency or special treatment given by the state in exchange for the person's testimony;
- information about other criminal cases in which the person had testified or offered to testify against another defendant with whom this person was confined or imprisoned; and
- other information in the possession, custody, or control of the state that was relevant to the person's credibility.

Evidence of a prior offense committed by a person giving this kind of testimony could be admitted for the purpose of impeachment if the person received a benefit with respect to the offense, regardless of whether the person was convicted of the offense.

Forensic science. The Texas Forensic Science Commission would be required to conduct two studies: one on the use of drug field test kits by Texas law enforcement agencies in the state and another on the manner in which crime scene investigations are conducted in Texas. The commission would submit a report summarizing the results and recommendations of each study to the governor, lieutenant governor, and the Legislature by December 1, 2018.

This bill would take effect September 1, 2017, and would apply to the use of statements made, the admissibility of evidence in a proceeding that began, a line up procedure conducted, a trial involving prior identification of the accused that occurred, or the prosecution of an offense committed on or after this date.

NOTES: A companion bill, SB 1577 by Perry, was referred to the Senate Criminal Justice Committee on March 21.